No. 75-1603

JUN 17 1976

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975

CLARENCE M. DITLOW, *et al.*,
*Petitioners,*

v.

PAN AMERICAN WORLD AIRWAYS, INC., NORTHWEST AIRLINES, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC., JAPAN AIRLINES, QANTAS AIRWAYS, PHILIPPINE AIR LINES, CHINA AIRLINES, BRITISH AIRWAYS, AND AIR NEW ZEALAND, LIMITED,
*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## SUPPLEMENTAL MEMORANDUM FOR RESPONDENTS IN OPPOSITION

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This memorandum is submitted in response to petitioner's Reply Brief, in which the petitioner attempts to argue that this Court's decision in *Nader* v. *Allegheny Airlines, Inc.*, No. 75-455, decided June 7, 1976, requires a reversal of the court of appeals' decision in this case or, at least, a remand of the case to the court of appeals for further consideration.

1. The *Nader* decision is inapplicable here. The fare charged in this case was that provided by a tariff duly filed with the Civil Aeronautics Board, as the Board has determined. Thus, the decision below comes squarely within the rule of *Keogh* v. *Chicago & N.W. Ry. Co.*, 260 U.S. 156, and *Georgia* v. *Pennsylvania Ry. Co.*, 324 U.S. 439.

There is nothing in the *Nader* opinion which suggests that the Court intended to overrule the *Keogh* and *Georgia* cases. On the contrary, the Court specifically noted that the petitioner in *Nader* was not attacking any tariff provision. It said (Slip Opinion, p. 13):

> Petitioner seeks damages for respondent's failure to disclose its overbooking practices. He makes no challenge to any provision in the tariff, and indeed there is no tariff provision or Board regulation applicable to disclosure practices. (Footnote omitted).

2. The petitioner continues his contention that there were "unauthorized overcharges" in this case. Reply Brief, p. 5. This, of course, begs the question. As the Civil Aeronautics Board, and the courts below, have determined, the charges here were made pursuant to effective tariffs filed with the Board. This fact should control here, and is a clear basis for distinction from this Court's recent *Nader* decision.

Respectfully submitted,

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June 1976

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